

HOUSE BILL 3073
By Arriola

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 13, relative to firearms and other weapons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1315, is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1)

(A) Any person may apply to the state of Tennessee, department of safety ("the department") for a firearms carry permit (a "permit"). If the applicant is not prohibited from owning a firearm in this state or under federal law and the applicant otherwise meets all of the requirements of this section, then the department shall issue a permit to the applicant.

(B) The application for a permit shall be on a standard form developed by the department and shall require the applicant to disclose, under oath, only the following information concerning the applicant:

- (i) full legal name and any aliases;
- (ii) addresses for the last five years;
- (iii) date of birth;
- (iv) social security number;

(v) physical description (height, weight, race, sex, hair color and eye color);

(vi) whether the applicant has been convicted of a criminal offense punishable for a term exceeding one (1) year;

(vii) whether the applicant is currently under indictment or information of any criminal charge punishable for a term exceeding one (1) year;

(viii) whether the applicant is currently subject to any order of protection and, if so, provide a copy of such order;

(ix) whether the applicant is a fugitive from justice;

(x) whether the applicant is addicted or has been addicted to alcohol, drugs or controlled substances;

(xi) whether the applicant has ever been hospitalized because of mental illness or alcohol or drug problems;

(xii) whether the applicant has ever been adjudicated mentally ill and/or had a conservator appointed by a court for his or her benefit; and

(xiii) a full set of the applicant's fingerprints.

(C) Applications for permits shall be made available for distribution and accepted by the department by mail or at any location where the state performs driver's license exams. For completed applications which are mailed to the department, it shall be the responsibility of the applicant to provide a full set of fingerprints suitable for performing a background check and a passport size photograph.

(2)

(A) Prior to the issuance of a permit, the department may conduct a reasonable background investigation regarding the applicant. The

background investigation shall be limited to those matters which this section requires the applicant to disclose, whether the applicant meets the handgun ownership requirements, whether the applicant has failed to disclose specific facts which are required to be disclosed, whether the applicant has a history of psychological instability and/or whether the applicant, if issued a permit, would pose a risk of harm to the public.

(B) Upon receipt of an application, the department shall notify the chief law enforcement officer of the applicant's county of residence. The chief law enforcement officer may, at his discretion, submit a report to the department containing any readily discoverable information that he feels may be pertinent to the applicant and regarding those matters enumerated under Section (2)(A). The chief law enforcement officer shall file any such report with the department within ten (10) days after the date he receives the copy of the application. If the sheriff or chief law enforcement officer chooses, he may notify the department in writing that he does not wish to receive copies of applications.

(C) The department may deny a permit if the department determines that the applicant has not accurately disclosed any material information required to be disclosed by the applicant, that the applicant fails to meet the requirements of this section, or that the applicant, because of mental illness, alcohol or drug problems, or physical infirmity, poses a material likelihood of risk of harm to the public. The following factors shall not be grounds to deny a permit:

(i) The existence of any arrest or other records for any indictment, charge or warrant which has been judicially or administratively expunged;

(ii) Any conviction for which the applicant has received a pardon;

(iii) Any conviction which has been judicially expunged or otherwise set aside;

(iv) Any charge or conviction for which the applicant's civil rights have been restored pursuant to title 40, chapter 29;

(v) A history reflecting that applicant was addicted to alcohol, drugs or any controlled substances if the applicant can demonstrate that it has been more than five (5) years since he or she was last so addicted;

(vi) A conviction for any non-violent crime if it has been more than five (5) years since the applicant successfully completed the provisions of any imposed sentence, probation and restitution imposed for such offense; and

(vii) Any prior denial, suspension or revocation of a firearms carry permit by this or any other state if it has been more than five (5) years since such denial, suspension or revocation.

(D) If the department denies an application, the department shall notify the applicant in writing within ten (10) days of such determination. The written notice shall be marked confidential and personal and shall state the specific factual basis for the department's determination, shall include a copy of any reports, records and/or inquiries reviewed or relied upon by the department and shall notify the applicant that the applicant has a right to bring a mandamus action to challenge such action.

(E) The department shall issue a permit to an applicant not otherwise prohibited from obtaining a permit under this section no later than thirty (30) days after the application is received by the department.

The department may issue a temporary permit for a period not to exceed thirty (30) days to any applicant whom the department believes is in an emergency situation that may constitute a risk of safety to the person or the person's family. The temporary permit may not be renewed and may be revoked without a hearing.

(F) A permit issued pursuant to this section shall be good for a period of four (4) years and shall entitle the permit holder to carry any firearm(s) which the permit holder legally owns or possesses.

(G) The permit shall be issued on a wallet-sized laminated card of the same approximate size as that then being used by the state of Tennessee for driver licenses and shall contain only the following information concerning the permit holder:

(i) The permit holder's name, address, date of birth and social security number;

(ii) A description of the permit holder by sex, height, weight and eye color;

(iii) Contain a color photograph of the permit holder;

(iv) Contain the right thumb print, or if none, another suitable single fingerprint, of the permit holder; and

(v) Contain the permit number and expiration date.

(H) The department shall charge an application and processing fee which shall not exceed the amount reasonably necessary to carry out the requirements of this section or fifty dollars (\$50), whichever is less. Such fee shall cover all aspects of processing the application and issuing the permit including, but not limited to, the costs of any background investigation, fingerprinting and/or photography.

(I) Substantial compliance with the requirements of this section shall provide the department and any political subdivision thereof with immunity from civil liability alleging liability for issuance of the permit.

(3)

(A) Prior to the expiration of a permit, a permit holder may apply to the department for the renewal of a permit by complying with the provisions of Section 1(a)(1). In the event that the permit shall expire prior to the department's approval or issuance of notice of denial regarding such renewal application, the permit holder shall be entitled to continue to use the expired permit, provided, however, that the permit holder shall also be required to prove by displaying a receipt for the renewal application fee that the renewal application was delivered to the department prior to the expiration date of the permit.

(B) The department shall cancel, or in its discretion, suspend a permit, if the department determines that a permit holder no longer meets the qualifications required for the issuance of a permit. The department must give the permit holder written notice of its intent to cancel or suspend a permit, the effective date of such cancellation or suspension, the specific factual basis for the department's determination, and that the permit holder has a right to bring a mandamus action to challenge such action.

(C) The department shall issue a duplicate permit to a permit holder upon the payment by the permit holder of a five dollar (\$5.00) fee.

(D) Within sixty (60) days of any change in a permit holder's principal place of residence, the permit holder shall notify the department of such change in writing.

(b)

(1) All permits issued on or after October 1, 1994, pursuant to the former provisions of this section shall be grandfathered under this revised section and, at the request of the permit holder, reissued. All such permits shall expire four (4) years from the date of issuance thereof notwithstanding anything to the contrary thereon unless otherwise terminated, canceled or suspended pursuant to the terms of this section.

(2) Within thirty (30) days of the effective date of this act, the sheriff and/or chief law enforcement officer of each county shall prepare and deliver to the department a list containing the identity of each person to whom a permit has been issued since October 1, 1994, their address, date of birth, social security number, the date of issuance of the permit holder's permit and, if applicable, permit number. Within forty-five (45) days of the effective date of this act, the sheriff and/or chief law enforcement officer of each county shall destroy all applications and files related to the approval or denial of any application submitted since October 1, 1994, and through the effective date of this act.

(c) All documents and/or records of any type received, generated and/or maintained by any state or local agency pursuant to this act, including the identity of permit applicants and holders, shall remain confidential and not subject to public inspection pursuant to the provisions of Tennessee Code Annotated, Section 10-7-503.

(d) An offense under this act shall subject the person to a civil fine of not less than five dollars (\$5.00) nor more than five hundred dollars (\$500.00).

(e) Any party aggrieved under the terms of this act, by the denial, suspension and/or revocation of a permit, or otherwise, may file a writ of mandamus, as provided by law, which action shall also allow the recovery of any actual damages sustained by the party. The aggrieved party, if prevailing in the action, shall also be entitled to recover those costs and attorney's fees reasonably incurred or relating to such action.

SECTION 2. Tennessee Code Annotated, Section 39-17-1305, is amended by adding subsection (c)(3):

Lawfully carrying the firearm if that person is not consuming alcohol or under the influence of alcohol. For purposes of this section, the term “under the influence of alcohol” shall mean that the person’s blood alcohol content, at the time alleged, was greater than or equal to eight hundredths of one percent (.08%) by weight of alcohol in the person’s blood.

SECTION 3. Tennessee Code Annotated, Section 39-17-1307, is amended by deleting subsection (a)(1) and substituting instead the following:

(a)(1) A person commits an offense who carries with criminal intent a firearm, knife with a blade length exceeding four inches (4”), or a club.

SECTION 4. Tennessee Code Annotated, Section 39-17-1309, is amended by adding subsection (e)(7) as follows:

By a person authorized to possess or carry a firearm pursuant to §39-17-1315.

SECTION 5. Tennessee Code Annotated, Section 39-17-1311, is amended by adding subsection (b)(8) as follows:

By a person authorized to possess or carry a firearm pursuant to §39-17-1315.

SECTION 6. Tennessee Code Annotated, Section 38-17-1316, is amended by deleting from subsection (a)(1) the words “of the illegal sale of alcoholic beverages” and substituting instead the words “of the sale of illegal alcoholic beverages”.

SECTION 7. Tennessee Code Annotated, Section 39-17-1321, is amended by deleting subsection (a) and substituting instead the following:

(a) Notwithstanding whether a person has a permit issued pursuant to §39-17-1315, it is an offense for a person, while in the public domain, to possess a firearm while under the influence of alcohol or illegally under the influence of any controlled substance. For purposes of this section, the term “under the influence of alcohol” shall mean that the person’s blood alcohol content, at the time alleged, was greater than or

equal to eight hundredths of one percent (.08%) by weight of alcohol in the person's blood.

SECTION 8. Tennessee Code Annotated, Section 39-17-1322, is amended by adding at the end thereof:

A person whose possession or use of a firearm is protected from criminal prosecution under this section shall not thereafter be denied a permit because of said unpermitted possession or use.

SECTION 9. Tennessee Code Annotated, Title 39, Chapter 17, Part 13, is amended by adding the following as a new section:

Any license or permit issued by the federal government or any other state shall be recognized pursuant to the terms thereof but only if the holder thereof is not a resident of Tennessee. Any person moving into this state who has a valid firearms carry permit from another state shall have a one hundred twenty (120) day grace period from the date they move into this state to obtain a firearms carry permit from this state.

SECTION 10. Tennessee Code Annotated, Section 39-17-1316, is amended by deleting subsection (c)(1) and substituting instead the following:

The fifteen (15) day waiting period does not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, licensed collectors, or firearms carry permit holders who meet the requirements of subsection (b) and certify prior to the transaction the applicable legal status of both parties. The burden shall fall upon the transferor to determine the legality of the transaction in progress.

SECTION 11. This act shall take effect July 1, 1996, the public welfare requiring it.